THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15787 of 1999

21.11.2007

Between:

Ameena Begum, W/o.Shaik Ameen
And others

…Petitioners

And

The District Collector, Adilabad
And another

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15787 of 1999

ORDER:

Four petitioners are residents of Nirmal Town in Adilabad District. They filed the instant writ petition seeking a writ of Mandamus directing respondents to pass award for the land/property acquired by second respondent and also in terms of order of this Court in A.S.No.1845 of 1994 dated 24.3.1999.

The brief facts of the case are as follows. First petitioner is allegedly owner of house No.1-3-28/8B with an extent of 2400 Sq.yards and second petitioner is owner of house No.1-3-340 with an extent of 2250 Sq.yards. Petitioners 3 and 4 are legal heirs of late Kanthamma who was the owner of house No.1-3-339. These houses are allegedly adjacent to the bus depot of Andhra Pradesh State Road Transport Corporation (APSRTC). The Government initiated action under Land Acquisition Act, 1894 (the Act, for brevity) for acquiring land for expansion/extension of existing bus depot. Notification under Section 4(1) of the Act was issued vide G.O.Rt.No.542, dated 14.6.1988. Subsequently G.O.Rt.No.1126, dated 04.10.1990 was issued by way of addendum whereunder properties in survey No.981 belonging to Syed Khaja Moinuddin, Syed Khan Mohiuddin and Syed Mazharuddin were sought to be included in acquisition notification issued in G.O.Rt.No.542, dated 14.6.1988. The same was followed by declaration under Section 6 of the Act. Petitioners allege that the Land Acquisition Officer (LAO) issued notices under Sections 9(1) and 10 of the Act to them and they also participated in the Award enquiry. Subsequently second respondent passed Award dated 04.8.1990 in proceedings No.A/3227/87, but compensation was not paid for the

houses/properties of petitioners. Therefore, they filed the present writ petition.

The LAO has filed counter affidavit. It is stated that after issue of notification under Section 4(1) of the Act, the Government acquired land admeasuring Acs.2.39 gts in survey Nos.981, 982 and 983 for extension of APSRTC Bus depot. Subsequently, Mandal Revenue Officer (MRO), Nirmal, submitted a report to the effect that there are other existing structures. These structures were valued by the Executive Engineer, Nirmal. Therefore addendum was issued including House Nos.1-2-48/1 (1-3-28/A – old), 1-2-48 and 1-3-340. Subsequently during the Award enquiry it came to light the houses and structures published in Notification under Section 4(1) of the Act were part of House No.1-2-48 belonging to Syed Khaja Moinuddin. Therefore entire compensation was paid to him. Houses allegedly owned by petitioners were not notified and were not existent then. It is alleged that they were constructed after issue of notification under Section 4(1) of the Act. As petitioners' properties were not acquired, compensation was not paid. Those owners who were paid compensation moved Civil Court in O.P.No.11 of 1991. The compensation was enhanced to Rs.100/- per Sq.yard. Aggrieved by the same, an appeal being A.S.No.1845 of 1994 was filed before this Court. This Court reduced compensation from Rs.100/- to Rs.75/- per square. Subsequently entire compensation was paid to the awardees and petitioners were not paid compensation, as they were not owners of the properties acquired. The writ petition is also opposed on the ground of delay and laches, as the writ petition is filed after lapse of eleven years.

Reply affidavit is filed by third petitioner on behalf of all petitioners. It is alleged that first petitioner purchased plot bearing H.No.1-2-48/1 under registered sale deed being document No.922/71 from Khaja Moinuddin, that second petitioner purchased premises bearing No.1-2-48/A under registered sale deed being document No.505/97 and that predecessor of petitioners 3 and 4 purchased premises No.1-2-48/A1 under registered sale deed being document No.1735/83. Therefore, they denied allegations made in the counter affidavit.

Whether properties of petitioners were acquired under the Act is essentially a question of fact. It is no doubt true that addendum vide G.O.Rt.No.1126, dated 04.10.1990 refers to petitioners 1 and 2 as well as predecessor of petitioners 3 and 4. But it is the case of the Government that during the Award enquiry it was found that these properties bearing No.1-3-28/8B, 1-3-340 and 1-3-339, which were shown in G.O.Rt.No.1126 formed part of the property owned by Syed

Khaja Moinuddin. There is no denial that the Award was passed and entire compensation was paid to Syed Khaja Moinuddin. It is also the case of the Government that the houses now claimed by petitioners, came into existence subsequently. House Nos.1-3-28/8B (1-2-48/1 – old), 1-3-340 and 1-3-339 are shown in G.O.Rt.No.1126. As seen from the said G.O., first petitioner is allegedly owner of H.No.1-3-28/8B admeasuring 60 X 40 Sq.yards, and second petitioner is allegedly owner of H.No.1-3-340 admeasuring 50 X 45 Sq.yards. Curiously petitioners 1 and 2 claimed to be owners of 2400 Sq.yards and 2250 Sq.yards respectively. This itself belies their contention that under G.O.Rt.No.1126 read with G.O.Rt.No.542, their properties were acquired.

What is the effect of delay and laches on the enforcement of right of petitioners if any? Admittedly, the notification was issued in G.O.Rt.No.1126, dated 04.10.1990, and the Award was already passed by then. Even assuming that the petitioners participated in the Award enquiry pursuant to notices under Section 9(1) and under Section 10 of the Act, dated 06.7.1990, they did not even seek proper redressal before second respondent. They filed writ petition on 22.7.1999. Therefore there is force in the submission of learned Assistant Government Pleader for Land Acquisition that delay and laches bar any remedy to petitioners. As rightly pointed out by the learned Assistant Government Pleader either in challenging the notifications under the Act or in challenging the award – if such a challenge is maintainable – delay and laches play a crucial role. A reference may be made to **State of Maharashtra v. Digambar**[1], **C. Padma v. Dy. Secretary to the Government of Tamilnadu**[2] and **Municipal Council, Ahmednagar v. Shah Hyder Baig**[3].

In **State of Maharashtra v. Digambar** (supra) it was held:

> In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. **Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land**

alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

(emphasis supplied)

In **C. Padma v. Dy.Secretary to the Government of Tamil Nadu** (supra), the Supreme Court held:

> ….It is seen that after the notification in GOR 1392 dated 17.10.1992 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose.

In **Municipal Council, Ahmednagar v. Shah Hyder Baig** (supra), the Supreme Court considered the effect of delay in exercise of jurisdiction under Article 226 and held:

> … It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defeats equity' has its fullest application in the matter of grant of relief under Art.226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

In this case when G.O.Rt.No.1126 was issued on 04.10.1990, petitioners filed writ petition after nine years. Therefore they are not entitled to any relief in these proceedings. Their petition is liable to be dismissed.

For the above reasons, the writ petition fails and is accordingly dismissed. No costs.

(**V.V.S.RAO, J**)

November 21, 2007
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[1] AIR 1995 SC 1991
[2] (1997) 2 SCC 627
[3] AIR 2000 SC 671